

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications for Review of Orders Designating	)	CC Docket No. 96-45
RCC Holdings, Inc & Cellular South as ETCs	)	DA 03-45
In the State of Alabama	)	

**COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above referenced proceeding. NTCA is a not-for-profit association established in 1954. It represents more than 555 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996.<sup>1</sup> Approximately half of NTCA member companies are organized as cooperatives, and half are small commercial companies. NTCA’s members stand to be adversely affected by any decision that fails to take account of the multiple issues recently referred to the Joint Board. Letting the Bureau’s decision stand sets a precedent that could undermine the Commission’s effort to address ETC and service area changes comprehensively.

**I. INTRODUCTION**

NTCA supports the Application for Review filed by the Alabama Rural LECs. Many of the important policy considerations at issue in this proceeding have been

referred to the Joint Board and it is likely that recommendations from the Joint Board will substantially impact the future of ETC designation requests and universal service funding.

The action granting the ETC petitions was taken by the Wireline Competition Bureau under delegated authority from the Commission and does not consider recent policy developments. The Bureau's decision also does not address the potential for irreparable harm to the rural telephone companies and the universal service fund. The Bureau's decision should be set aside until after the Joint Board issues its recommendations and the Commission has had time to accept or reject them.

## **II. THE COMMISSION SHOULD SET ASIDE THE BUREAU'S DECISION IN THIS PROCEEDING DUE TO THE UNCERTAINTY SURROUNDING THE RELEVANT ISSUES**

The Bureau's decision granting ETC designation to RCC Holdings, Inc. and Cellular South License Inc., ignored the fact that the policies and rules upon which it is based are currently under review by this Commission. There is growing concern in the industry and among the Commissioners about the sustainability of the universal service high cost fund under current rules and policies. The industry has changed since the original rules were put in place and programs or policies that put competition before the public interest are straining the universal service support system.

On November 8, 2002, the Commission requested the Federal-State Joint Board on Universal Service to review many of the Commission's rules relating to the high-cost

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<sup>1</sup> 47 U.S.C. § 153(37).

universal service support mechanisms.<sup>2</sup> The Joint Board will be examining high-cost support levels in study areas with competitive ETCs, support for second lines and the process for designating competitive ETCs.<sup>3</sup> The Joint Board will be reviewing the methodology for calculating support for ETCs in competitive study areas and considering whether the Act's goals would be served if support were limited to a single connection to the end-user, whether provided by the incumbent or the competitive ETC.<sup>4</sup> Specific to competition in rural areas, the Commission asked the Joint Board to consider whether it is advisable to establish federal processing guidelines for ETC applications and to what extent the FCC should provide additional guidance on the impact of the disaggregation of support on the designation of a service area other than the ILEC's study area.<sup>5</sup>

In recognition of the strain being placed on the universal service fund, at least three of the FCC's Commissioners are questioning the apparent policy of using universal service support to create competition in high cost areas. Just last week at NTCA's annual meeting in Phoenix, Arizona, Commissioner Adelstein stated, "Universal service is the bedrock of American telecommunications policy . . ." <sup>6</sup> He stated, "[The states] need to take great care in doing this – greater care. . . than some have in the recent past." <sup>7</sup> The Commissioner went on to offer his recommendations to regulators:

I'm encouraging state commissioners to carefully consider the public interest when making their eligibility determinations, as is required by the Act. Specifically, states must make sure that the new market entrants

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<sup>2</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 02-307 (rel. Nov. 8, 2002) (Portability Proceeding).

<sup>3</sup> Portability Proceeding, ¶ 1.

<sup>4</sup> *Id.*, ¶¶ 5-9.

<sup>5</sup> *Id.* ¶ 10.

<sup>6</sup> "Adelstein, "Rural America and the Promise of Tomorrow," NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

<sup>7</sup> *Id.*

receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service.<sup>8</sup>

Commissioner Adelstein addressed the concerns of a ballooning universal service fund and the need to balance competition against the public good, stating, “The public interest also demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn’t be given as a matter of course just because it appears they meet other qualifications.”<sup>9</sup>

Commissioner Adelstein’s remarks echo earlier statements of Commissioner Martin. In a separate statement to the Order adopting the MAG plan, the Commissioner questioned “the Commission’s policy . . . of using universal service support as a means of creating ‘competition’ in high cost areas.”<sup>10</sup> Commissioner Martin recognized that subsidizing multiple competitors in an area that cannot support it “may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.”<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Separate Statement of Commissioner Kevin J. Martin in *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board on Universal Service Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd 19613 (2001).

<sup>11</sup> *Id.*

The Chairman of the Commission set the tone for the Joint Board referral when he challenged the former Commission's "pro-competitor industrial policy."<sup>12</sup>

Clearly, a change of universal service funding policies is imminent. The Wireline Competition Bureau's decision granting ETC designation flies in the face of recognized shortfalls in the current system. It is inappropriate for the Bureau, using its delegated authority, to make decisions based on standards that the Commission is in the process of reviewing and revising.

Knowing that the ETC designation process is likely to be altered and that universal service funding may become more difficult to come by, there is danger that there is an incentive for carriers to obtain ETC designations and support quickly, before changes to the system are adopted. Carriers will come to depend on the windfall support, making it difficult to stop payment at a future date. Even if the support is stopped at a later date, immediate harm to the universal service fund and the consumers of this country could not be avoided. USAC data indicates that the annualized amount of high-cost funding going to wireless providers with approved status from the fourth quarter of 2001 through the first quarter of 2003 would increase by \$95.5 million.<sup>13</sup> This potential explosion in the universal service fund cannot be ignored. There is also immediate harm to the rural ILECs and the customers they serve. Rural ILECs will be forced to trim already narrow budgets so that they may deal with the adverse affects of subsidized competition when it will be later be revealed that subsidizing that competition was never in the public's interest.

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<sup>12</sup> Speech by Michael K. Powell at the Goldman Sachs Communicopia XI Conference, New York, NY (Oct. 2, 2002).

Not only should the Commission act to protect the public interest by setting aside the Wireline Competition Bureau's decision to grant ETC designation to RCC Holdings, Inc., and Cellular South License, Inc. in Alabama, it should put a temporary halt to all competitive ETC designations.

### **III. CONCLUSION**

The policies and rules upon which the decision of the Wireline Competition Bureau's decision is based are being scrutinized by this Commission and will change. While these changes are being considered and implemented, the Commission should act to avoid harm to universal service funding, rural consumers and the telephone companies that serve them. Therefore, the Bureau's decision should be set aside until after the Joint Board issues its recommendations and the Commission has had time to accept or reject those recommendations.

Respectfully submitted,

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<sup>13</sup> See, USAC HC01 Reports for 4Q01 through 1Q03.

February 10, 2003

## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 03-45 was served on this 10th day of February 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

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Comments, February 10, 2003

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